

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on February 5, 1999 at 3:22 P.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 327 2/1/99, SB 361 2/1/99,
SB 384 2/4/99
Executive Action:

HEARING ON SB 327

Sponsor: SENATOR GERRY DEVLIN, SD 2, Terry

Proponents: Mark Bridges, Board of Livestock

John Bloomquist, Montana Stockgrowers

Opponents: None

Opening Statement by Sponsor:

SENATOR GERRY DEVLIN, SD 2, SB 327 is a ballot issue to go to the people of Montana because of CI 75, which demands you go to the people for a vote if there's an increase of fees. The Department of Livestock is approaching a rerecord year at the turn of the century. The Dept. of Livestock has been running expenses of about \$93 for the upkeep of these brands through the 10 year cycle. This bill raises the fee from \$50.00 to \$100 for 10 years. We talked about doing this in 1989 and decided it would be all right the way it was for another cycle. That cycle is almost over and because it has to go to a vote of the people we brought it forward to this committee. There are some amendments that I will offer. **SEE EXHIBIT (ags29a01)**.

Proponents' Testimony:

Mark Bridges, Dept. of Livestock, read written testimony and passed out analysis on cost of processing brands and average brand costs for other states. **SEE EXHIBIT (ags29a02)**,

John Bloomquist, Montana Stock Growers, The Stock Growers Board met last week, considered this proposal by the department and endorsed it unanimously.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR JERGESON Is there any danger that our friends in the city are going to decide to save you \$50 and vote this down?

SENATOR DEVLIN I guess that will be one of the tests of CI 75 to see how in fact it does get implemented.

SENATOR BECK I'm looking at the recording fees for the other states and I don't see a \$100 fee in there. Is there a possibility of going \$75 instead of \$100?

Mark Bridges With our fees based on costs, it wouldn't. North Dakota is \$15/10 years but their inspection fees are seventy five cents a head. Ours are thirty five cents a head and have been since 1983. In Montana when you rerecord for a fee of \$100, it includes horses, cattle, and sheep. These other states are by

species. In Alberta it costs you \$25/yr. for a horse brand, \$24/yr for a cow brand. It's the same throughout the 19 states.

CHAIRMAN JABS It's \$100 per brand and we're the cheapest fee for inspection. It's \$100 for 5 cows or for 20,000. If you just upped the inspections a little bit it would even this out.

Mark Bridges The board is adamant that we don't want to raise the inspection fee. There's some packer/feeder efforts to discount your product for having a rib brand. Not to give you a premium for no brand cattle, but the Dept. has sworn to protect the industry from theft. If you don't brand your cattle out on the open range and you can't market them, the premium or discount isn't going to make a hoot to you because you don't have a product to market.

It's becoming more difficult for the Dept. to record good shoulder or hip brands to fulfill the demand the packers and feeders are placing. We have some policy things within the Board to fix that so if this discounting actually does take place, we can record good usable brands to livestock producers. There are 80,000 records out there and you could have 3 owners on one brand. There are 17,000 farms or ranches in this state, so there's a lot of people recording brands either to sell or they just want to have a brand from Montana.

CHAIRMAN JABS As the bill started out it said rerecording would be \$100, but by your amendment changes it to rerecording and also transferring.

Mark Bridges There was a miscommunication between Legislative Council and the Dept. The original intent by the board was to increase the fee for the recording of a new brand, transfer of a brand, or rerecording of brand.

SENATOR BECK You won't rerecord a two letter brand any more. Is there any truth to that?

Mark Bridges No. It gets more difficult right now with the statutory duty we have to protect you, the brand owner, due to the conflicting with all the brands out. We developed a policy committee with the Stock Growers and the Board to review that brand recording policy. About March of 2002, all those brands that weren't rerecorded will be available to the public. Every brand that's available will be looked at as a recordable brand unless it's conflicted up.

SENATOR BECK Would you have a potential market for selling some of those brands, rather than just rerecord, such as a 2 letter brand that came back in?

Mark Bridges It would have to be rerecorded in order to still maintain it's private property right by the holder. If it wasn't rerecorded it reverts back to the state to be issued to another person. We do know of some brands that were sold for upwards of \$8,000.

SENATOR BECK Some brands are worth more than others. But the recording fee is the same.

Mark Bridges Exactly. As far as we're concerned, a brand right now is worth \$50.

SENATOR BECK How do you handle that? How do you handle a 2 letter brand that comes open?

Mark Bridges We conflict it. A B and an E or a F, if you had a straight F, that could be converted to a B or an E, and it depends upon the location, where people market their cattle and the brand position. It's quite a science.

{Tape : 1; Side : A; Approx. Time Counter : 3.35}

Closing by Sponsor:

SENATOR DEVLIN The way I understand it, **SENATOR BECK**, is that when a brand comes open, after it's not renewed, the first come first serve can pick that brand up for the same price. Good brands are selling very high. They are certainly worth it too. Some people don't even own a cow and they have an excellent brand.

HEARING ON SB 361

Sponsor: **SENATOR KEN MESAROS, SD 25, Cascade**

Proponents: **Mark Taylor, Montana Alternative Livestock**
Loren Jenkins
Stuart Doggett
Jack Schubarth
Kim Kafke
Ken Mackey, Montana Farmers Union
Marty Boehm
Gerri Backer
Jeff Cuthbertson
Charles Taylor
Bob Spoklie

Opponents: **Pat Graham, Dept. of Fish, Wildlife & Parks**
Gary Holmquist, Ravalli Fish & Wildlife

Stan Rausch
Terry Klampe
Chris Marchand
Bill Arsello
Stan Frasier

Opening Statement by Sponsor:

SENATOR KEN MESAROS, SD 25, SB 361 is focusing on regulatory authority transfer and not on rules and guidelines that have been involved in this lengthy process surrounding alternative livestock. Historically, Fish, Wildlife & Parks have managed wildlife throughout the State of Montana. Department of Livestock's historic role is managing domestic livestock. With the growing industry of alternative livestock, these two agencies have shared a role. We'll be discussing the regulatory authority between the two.

Time and energy has been devoted in developing **SB 361** to mitigate the concerns of all interested parties. We cannot allow special interest groups with emotional pleas to influence state agencies to modify rules. We will be hearing testimony that will demonstrate there has been concerns with unrealistic time lines, inconsistency in licensing, and unreasonable stipulations. This is a viable opportunity for diversification in the agriculture arena. The operators of these alternative livestock productions are the business owners that assume the business risks that any other business owner has. They have the responsibility and certainly a high investment in this industry.

What is an alternative livestock ranch? It's operating and harvesting alternative livestock in compliance with the standards established by existing statutes and rules. Elk and deer ranching has become an alternative to traditional livestock and should be regulated as such. The '95 Legislature gave Fish, Wildlife & Parks the lead agency of alternative livestock. Their assigned responsibilities presently include licensing, reports, record keeping, exterior fencing, classification of exotic species, removal of game animals, inspection, and related enforcement actions. Dept. of Livestock is responsible for disease control, marking inspection, transportation, importation, quarantine holdovers, interior facilities, health issues, and related enforcement.

The question will be identified as to what regulatory authority will remain with FWP. It's not the attempt of the alternative livestock to remove FWP from it's legitimate role in the protection of Montana's wildlife and native habitat.

Accordingly, FWP will remain involved in removal of game animals, licensing and ingress situation, prosecution of game animal theft. Dept. of Livestock must notify FWP of any unresolved discrepancies in record keeping, be involved in prelicensure and annual inspection of exterior fencing, classification of exotic species, hybridization and genetic dilution, and advise Dept. of Livestock of disease transmission issues, assist Dept. of Livestock in development of programmatic for EA purposes. Why the transfer?

One of the results of the Vision 2005 task force directly addresses the development and marketing of alternative livestock. It recognizes alternative livestock as a livestock operation. It ensures the balance of regulations to protect sportsman interests as well as commercial and alternative livestock, provide in it's marketing.

The agriculture climate is certainly in need of some diversification. There are concerns with current regulatory framework in fundamental problems with the license process under FWP, a lack of consistency in the treatment of applications, noncompliance with statutory time frames, unreasonable license stipulations, many of which infringe upon the Dept. of Livestock's delegated responsibilities. The negotiated rules will be utilized and again, the rules and regulations that are in place will be followed throughout this process.

SENATOR MESAROS walked through the bill, giving explanations of Sections 1 through 30. The alternative livestock industry has grown. They have magazines and directories similar to those the livestock industry has as far as the pedigrees, production of animals. We can have a viable alternative livestock industry and yet protect our natural resources while doing that.

{Tape : 1; Side : A; Approx. Time Counter : 3.51}

Proponents' Testimony:

Mark Taylor, Montana Alternative Livestock Producers, distributed written testimony. SEE **EXHIBIT(ags29a03)**. As has already been mentioned, Montana's ag industry is in trouble. Traditional producers are looking for a means to offset the current low prices. One proven suggestion is the Alternative Livestock Industry. A way of illustration, in 1997 850 tons of venison was imported into the United States at a price of 16 million dollars. That's a significant opportunity for Montana's alternative livestock.

{Tape : 1; Side : A; Approx. Time Counter : 4.07}

(Turn Tape)

Loren Jenkins told his experience with the application process. In May, a 26,000 acre game farm proposal south of Havre had been ruled to need an Environmental Impact Study, due to the steep slopes and crossing the rock ridge. The owner, Kim Kafke, had an engineer check the slopes and they were not too steep. Tom Hines, director of region 6 and the local game warden and biologist, Kim Kafke and myself drove around and looked at everything. We agreed to cut the pasture and ran the fences to stay on good fencing ground. This would allow him to have his operation running last fall. Everybody there agreed on this plan.

Mr. Kafke had to reapply as the original permit couldn't be amended. He did so and a public meeting was held in Havre. Testimony was mostly in favor. One group was granted an extended period. It's now late September. This group got a number of ranchers in and thought they were going to do pretty well. The ranchers decided this was similar to their own livestock operations. It's taxed and on privately owned land. Most of the ranchers posted their places saying this group was not welcome to hunt.

This game farm does have permission to operate now, but it did miss it's cycle this time. How much it cost the rancher he can't say, but it dragged out for 9 months. It's worth our effort to make it reasonable to get licenses.

Stuart Doggett, Montana Veterinary Medical Assoc. Our industry works a lot with the people in the alternative livestock industry. We prepare regulations for this industry that our members see growing across the state and many of them serve.

Jack Schubarth, President, Montana Alternative Livestock Producers, read written testimony, SEE **EXHIBIT** (ags29a04).

Kim Kafke, diversified into the elk industry about 2 years ago. I worked on the negotiated rule making process. We tried to address everybody's concern, including our regulatory agency, and worked on the best fencing technology, making it mandatory and banned hybrids. All caucuses spent a lot of time on those rules. After 2 years the final draft came out and I have trouble understanding these rules anymore. Words like "may" replace "shall", "minimum" in front of a sentence, it all changes the original intent. I think we can preserve these rules.

There are special interest groups in this state that manipulated the public comment area. I have copies of Fish Wildlife & Parks' top site. You're not allowed to lobby on this site. During my entire public comment period, the Montana Wildlife Federation was allowed to lobby at free will on this site. Mr. Kafka read a letter stating "Sportsmen had the deck stacked against them. Game farms are a potential disaster with game farmers lying and agencies making under the table deals with Fish Wildlife & Parks."

This was on my regulatory agency's site and I want to be treated fair.

John Bloomquist on own behalf, One of the most important parts of this legislation is the programmatic environmental review. One of the things about Montana Environmental Policy Act is the threshold between environmental assessment and a full blown environmental impact statement. That threshold is generally determined by what would be the significance of a particular project. In Mr. Kafka's instance, we debated with the FWP on whether an EIS was needed. They tried to impose a fee under MEPA to Mr. Kafka for the EIS. A problematic environmental review is absolutely necessary and should be seriously considered as a good part of this legislation.

Ken Mackey, Montana Farmers Union, ranches east of Belt in the Highwood Mountains. This an alternative to low ag prices. Montana will avoid some of alternative livestock horror stories from other states with this bill.

Marty Baine, I've ranched elk in the Kalispell area for the last 17 years. I'm a proponent of this bill.

Gerri Backus, Montana Alternative Livestock Producer from Kalispell, ask for your support for SB 361.

Jeff Cuthbertson, owner of Autumn Song Elk Ranch in Kalispell, turned in written testimony. **SEE EXHIBIT(ags29a05)**

Charles Taylor, 3rd generation livestock producer in Montana, currently cow/calf operation and elk. Submitted written testimony regarding application for and receipt of Montana game farm license. **SEE EXHIBIT(ags29a06)**

{Tape : 1; Side : B; Approx. Time Counter : 4.40}

Bob Spoklie, This type of ranching and hunting operations are carried on in all the states surrounding us, including Wyoming. Montana Wildlife Federation says it's not in Wyoming. Wyoming

has the largest hunting operation in western United States. We're not asking for something that isn't already done. They talk about escapes. Since the new fencing rules have been in place, we've only had one unaccounted for elk in the last nine years and that came out of an area that was not under the new fencing rules.

SEE **EXHIBIT**(ags29a07), **EXHIBIT**(ags29a08), **EXHIBIT**(ags29a09), **EXHIBIT**(ags29a10), **EXHIBIT**(ags29a11), **EXHIBIT**(ags29a12), **EXHIBIT**(ags29a13), **EXHIBIT**(ags29a14), and **EXHIBIT**(ags29a15), handouts distributed to the committee.

Opponents' Testimony:

Pat Graham, on behalf of the Administration of Governor Marc Racicot, read written testimony. SEE **EXHIBIT**(ags29a16)

(CHANGE TAPE)

Gary Holmquist, Member Ravalli Fish and Wildlife, feels vehemently about this issue and that it remains under FWP. Passed out document on Game Farm Industry and its implications for wildlife. SEE **EXHIBIT**(ags29a17). There is a large farm in the Bitterroot where tax dollars are paying for EIS's and Environmental Assessments. He didn't think tax payers should have to support this industry.

This industry is not on an upswing. He read a quick excerpt from the 1/10/99 Sydney Morning Herald that says "deer farmers have been devastated by the loss of venison export markets. The deer industry has collapsed from competition and the Asian economic crisis". Someone earlier stated the Montana Wildlife Federation lies, saying other states don't have game farms. That's not what the Federation says. Read last paragraph of report from Wyoming, from 1991, stating "did not get rid of existing game farms, stopped any future game farms, stopped captive shooting, stopped proliferation of wildlife. We believe the information presented in this report presents a real risk to native wildlife populations of Wyoming".

Heard a lot about domestic livestock and alternative livestock inside the fence and out. The issues that surround game farms are unique to wildlife. They're not unique to domestic livestock. If a cow escapes from a fence she doesn't breed with an elk, while a domesticated elk will interbreed.

Stan Rauch, Montana Bowhunters Assoc., read written testimony. SEE **EXHIBIT**(ags29a18).

Terry Klampe, Four years ago I stood in front of this committee with a piece of legislation that sought to phase out game farms in Montana. We tried to emphasize the absolute biological dangers associated with game farms. Four years later I stand in front of the same committee and I can honestly tell you I speak for thousands of Montanans who are equally concerned. Dept. of Livestock does not have the expertise to deal with these complicated real and potential biological dangers posed to our wildlife. At the very least, you should keep FWP involved at the current level.

Chris Marchand, sits on the Governor's Game Farm Council which helps identify problems within the industry and provides some direction addressing those problems. The council was created by the 1995 Legislature as reaction to all the confrontational legislation that came from both sides in both the '93 and '95 sessions. The Negotiated Rules Committee has been meeting for over two years in an attempt to find some common ground between wildlife and livestock interests. The result of their efforts came to fruition this past November. All of the participants agreed to a series of rules that would be implemented and administered by both FWP and DoL.

It's his opinion that the rules agreed to should be adopted and administered in the manner agreed. Changing the administration of these rules would be disregarding the effort of everyone who participated in that process. By removing FWP supervision, there would be no protection measures in place for wildlife. The DoL does not qualify to determine the adverse affects concerning wildlife.

Bill Orsello, Montana's publicly owned wildlife is a billion dollar economic benefit to the State of Montana. One of the foremost authorities on wild ungulate populations identified game farming as one of the greatest threats to this resource. We're going to have game farms in Montana and it's critical that the oversight of that industry be under the scrutiny of an agency that's statutorily responsible and a demonstrates commitment to protecting our wild game populations. Fish, Wildlife and Parks has demonstrated that commitment.

Stan Frasier, Montana Wildlife Federation, The Montana Wildlife Federation had two representative on the Negotiated Rule Making Committee, Mike Vashro and Joel Scrafford. Joel is a retired US Fish and Wildlife Service Game Warden who spent much of his career regulating and investigating game farm operations. This is his statement. **SEE EXHIBIT(ags29a19) .**

This bill is about disease threat to our native wildlife. The game farm industry is seeking less oversight so they can make more money. The game farm industry has a history of disease problems; many other states have studied that and decided this is too dangerous.

{Tape : 2; Side : A; Approx. Time Counter : 5.07}

Questions from Committee Members and Responses:

SENATOR NELSON If this bill will give a lot of responsibility to DoL. Are they willing to take this on and not to be manipulated by the game people?

Mark Bridges The Dept. of Livestock and Board of Livestock are neither opponent nor proponent of the bill. We felt if the legislature was going to require DoL to do those functions, it should be properly financed and staffed and that's why this fiscal bill is the way it is. We had not done some of these things, so we have to properly staff and educate ourselves.

SENATOR DEVLIN You have a fiscal note you signed?

SENATOR MESAROS I'm surprised there's not a fiscal note in your packet. The fiscal note was delivered to me this morning but I did not sign it as I did not agree.

SENATOR DEVLIN Have you had a chance to compare the draft fiscal note with what is in the book on page 10.

SENATOR MESAROS No.

SENATOR JERGESON Questions related to Section 32. Apparently if the Supreme Court does not find CI75 unconstitutional, then the fee changes earlier in the bill will not be implemented and you will not submit the issue of those fees to the voters? Is that what I understand?

Mark Taylor It dies if CI 75 is not declared invalid.

SENATOR JERGESON That's not what it says here. In fact, it only says that it will be an invalid act or a voided act if sufficient money is not appropriated.

Mark Taylor We'll look to amend. The intent of that section is that if CI 75 is not invalidated, the bill does not proceed through the legislative process.

SENATOR JERGESON What would be the source of the funds appropriated to the Dept. of Livestock for administering this act.

Mark Taylor We have not identified those funds, but it's anticipated that at least the start up costs would have to probably come from the general fund.

SENATOR JERGESON If it's not appropriated from the general fund, would it be permissible to appropriate it from ear marked revenue accounts in the DoL?

Mark Taylor We do not anticipate appropriating funds from other revenue sources in the DoL.

SENATOR JERGESON How about ear marked revenue accounts in the Dept. of Fish, Wildlife & Parks?

Mark Taylor That is not our intention. With regard to the budget process, we defer to the legislature to identify those funds.

SENATOR JERGESON In your package you include Montana Dept. of Livestock fiscal impact. Is this an estimate developed by DoL? Is that what's incorporated into the fiscal note?

Mark Taylor The fiscal note you have in your right hand is what I received from the Dept. yesterday. I've not seen the official fiscal note so as to compare the two.

SENATOR JERGESON Looking at these numbers and what the DoL has identified as costs, do you dispute these numbers.

Mark Taylor We just received those figures. That fiscal note was created, to my understanding on October 1 effective date of this year. We are looking at exploring alternatives to address precisely those costs in the fiscal note.

SENATOR JERGESON If CI 75 is found invalid and the fee schedule in the bill is approved, apparently you estimate in 2001 it would generate \$84,636 which is well short of the ongoing costs for fiscal year 2001 of \$396,00. From where will that difference be made up?

Mark Taylor I would like to submit fiscal note preface on July 1, 2001 effective date. I would like an opportunity to do that Monday for your review to hopefully address those questions where we can still enable the DoL to adequately staff and fund the

program within the Dept., but at the same time be able to address the funding through fees within the association itself.

SENATOR BECK I was sitting on this committee when we looked at this 4 years ago. We still have the same problem. Did I hear someone say some of the rules are just being adopted after 4 years of this program?

Pat Graham Two years ago we started a negotiated rule making process. It was October '98 before those rules were signed off on by all participants in the rule making process. The attempt was to try to provide some more certainty in addressing the issues they spoke to earlier, like fencing, etc.

SENATOR BECK Was game farming on a hold this whole time while you were trying to come up with these rules and regulations?

Pat Graham A number of applications were processed in this last 2 years. Nothing has been put on hold.

SENATOR BECK The first criteria for evaluating game farms is destruction of habitat of endangered species. What's the tie between game farming and destruction of habitat.

Pat Graham When you put in a game farm, you remove all the native ungulates off of that property. When the changes were made, we discussed what criteria should be used in the siting and determining whether it be appropriate to site game farms in those areas. These were the three criteria established. We have not, at this point, turned down any game farms because of impacts on endangered species.

SENATOR BECK But you've probably dragged that on by looking at that impact, and I can't believe the average size of a game farm would be that big that it's going to get into that type of a scenario.

Pat Graham We have 120 days to complete our review. As I mentioned, in 6 instances we overshot that by an average of twelve and a half days in the last two years. I don't believe we're dragging that on, we hire a consultant to do the MEPA compliance, do the EA for us, provide that document. Several of the proponents of this bill spoke about the environmental reviews that's been done on their game farms.

SENATOR TESTER Disease was brought up on both ends. I refer back to what **SENATOR MESAROS** said about transferring this from one department to another. What is the incidence of disease in these

game farms, if there are any solid figures on that, and are there any solid figures on transference to the wildlife population.

SENATOR MESAROS I don't have those particular figures at my fingertips. The focus is on regulatory authority and the disease issues will fully be addressed regardless of who handles that authority. Possibly Mark Taylor could furnish those figures.

SENATOR TESTER If it's an issue of consequence, I need to hear from the DoL if it's in their power to resolve that issue.

Dr. Arnold Gertonson, Veterinarian with Dept. of Livestock, At this time, since we have not had this full program transferred over, we feel the fiscal note in front of you would provide us with the funds necessary.

SENATOR BECK I'm looking through here, 41 new game farms licenses for expansion, 22 existing game farms, 16 other game farms. Did you deny any permits. Only 1? What ground did you deny that one?

Pat Graham I would have to refer that. Expansion on Wallace game farm in the Bitterroot, and I think the impact there was it was expanding into an important mule deer winter range. If you like, I have people here from my regional staff.

SENATOR BECK I'd like to know how big it was. I'm trying to get a handle on what kind of impact we're getting into.

Rich Clark, former regional supervisor when that issue was made, That particular application involved an addition of 1800 acres that's traditional winter range for a fairly large herd of mule deer. They had already encompassed 1200 acres. We had some problem with migration, the deer were running along the fence line and were impeded from going further. We felt that 1800 additional acres were really going to impact that native herd.

SENATOR BECK That was his private land.

Rich Clark That's correct.

VICE CHAIR MCNUTT A lot of rules have been worked on over the last two to four years to come to this point. If this bill goes into effect, are you going to start that process all over again?

SENATOR MESAROS The negotiated rule making that they've adopted will be adopted and transferred from one department to the next.

SENATOR NELSON Everybody had signed off on this Negotiated Rule Making, is that right?

Pat Graham That's true.

SENATOR NELSON I've heard from some of the people that represented these game farms that didn't feel satisfied with that negotiated rule making at all and that's why this bill is back before us. If they signed off on it, on one hand they must have signed but they weren't agreeing with it.

Pat Graham It took 2 years to get to where we were. It was by a consensus process so everybody had to agree on it before it could openly move forward. We had an independent facilitator out of Missoula hired to help do the process because not only was FWP involved in that process but these were joint rules that included the rules that guide the DoL, so it wasn't just FWP's rules, it was the whole thing. We had representations of the interests of that were involved in that and the whole group sat down time and time and time again to work through the various provisions, changes of the rules and it took 2 years to get that done.

SENATOR NELSON And none of the little words have changed since that time, like a "may" become a "shall".

Pat Graham We sent the rules to the facilitator, which was Gerald Mueller, to ask him to review those and make sure that in the final drafting there was no change of intent from those that were signed off on by the committee. He said that was the case.

SENATOR BECK On the one you denied, if that particular individual put up the fence that you didn't want without applying for a game farm, would you challenge him in court to take that fence down because it was winter feeding grounds for your deer.

Pat Graham I don't know what we would have done. That exact situation happened in Wyoming, the state did sue and won.

SENATOR BECK There's probably some grazing happening on private ground. I have a problem in my own area right now and you're going to be aware of it about how the game come on private land. All of a sudden now, we're saying hey, that game is on public land, we can't use it. What happened to private property rights?

Pat Graham Governor Stephens appointed groups of interested persons to develop recommendations for those criteria that are now put in the rules. It was done in a negotiated process.

SENATOR DEVLIN There's an individual over in the White Sulphur Springs area that built a rather extensive fence. Are you in the process of maybe making that person take that fence down, do you have any thoughts of suing him?

Pat Graham No, it's on private land. I know where the fence is and no, we are not.

{Tape : 2; Side : A; Approx. Time Counter : 5.31}

CHAIRMAN JABS There's a lot of emphasis on the EA, it's expensive and time consuming. If you switch it from Fish and Game to Agriculture, will it make any difference?

SENATOR MESAROS Proceed with programmatic EIS, right now that function lies with FWP. That would be their responsibility to proceed with that at this time **(TURNED TAPE, TESTIMONY MISSED)**.

CHAIRMAN JABS You think they're more efficient then, cheaper and faster.

SENATOR MESAROS Once the programmatic EIS is completed, that would establish a criteria framework to facilitate the processing of permits. Without going into an EIS individually.

Closing by Sponsor:

SENATOR MESAROS Last session they were instructed to implement this negotiating rule process. There's been frustration from some members who sat on that negotiated rule making process. They indicated there have been changes or suggested changes and they don't recognize some of the rules. There have been time delays and a better job meeting those statutory time frames has to be done.

The regulatory authority will remain with FWP for removal of game animals both prior to licensing and ingress, prosecution of game theft, fee licensure, annual inspection of exterior fencing, classification of species, address hybridization and genetic and advise Dept. of Livestock of disease transmission issues, assist DoL in development in programmatic EIS. Dept. of Livestock has licensed professional veterinarians on their staff to deal with disease issues. Fish, Wildlife & Parks will remain to fulfill the role of protecting the wildlife in the State of Montana.

The proposed regulatory transfer will not negate the hard work and effort of the caucuses involved in the negotiated rule making process. The rule making process will be transferred and utilized. There's been frustration from tax dollars being spent

on the cost of all the EIS's. I point to programmatic review that will ultimately enhance better review and utilization of this industry.

This is a good faith effort to address concerns on both sides. I believe that we can give producers across the state the opportunity for diversification and have the DoL fulfill it's historic role in alternative livestock and livestock products and FWP its historic role in managing wildlife. I believe there may be some amendments forwarded.

HEARING ON SB 384

Sponsor: SENATOR KEN MESAROS, SD 25, CASCADE

Proponents: Mike Taylor
Paul Sihler, Fish, Wildlife & Parks

Opponents: None

Opening Statement by Sponsor:

SENATOR KEN MESAROS, This bill identifies the rules and regulations that FWP will retain in the game farm area as far as lions and bears. If **SB 361** proceeds, we do not want transfer the authority of lions and bears to Dept. of Livestock.

Proponents' Testimony:

Mike Taylor, Montana Alternative Livestock Producers, We rise in support of this bill.

Paul Sihler, Dept. of Fish, Wildlife & Parks, In the current regulatory framework, mountain lions and bears are included as game farm animals. That really never made much sense, because they were regulated in a different way than elk and deer. This is something we like to see done independently of **SB 361**. We support this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: None given.

ADJOURNMENT

Adjournment: 5:43 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags29aad)